



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR 165

[Docket Number USCG-2023-0256]

RIN 1625-AA00

**Safety Zone; Ohio River MM 469.5-470.5 and Licking River MM 0.0 to 0.3,**

**Cincinnati, OH**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone from Mile Marker 469.5 - Mile Marker 470.5 of the Ohio River and from Mile Marker 0.0 - Mile Marker 0.3 of the Licking River. This action is necessary to provide for the safety of life on these navigable waters near Cincinnati, OH during the Redbull Flugtag sporting event occurring on August 12, 2023. This safety zone prohibits persons and vessels from transiting through the safety zone unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

**DATES:** This rule is effective from noon through 5 p.m. on August 12, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0256 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 Julie Thomas, Marine Safety Detachment Cincinnati, U.S. Coast Guard; telephone 513 921 9033, email [Julie.A.Thomas@uscg.mil](mailto:Julie.A.Thomas@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i><b>Federal Register</b></i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because due to timeline requirements, it is impracticable to publish an NPRM and consider the comments because we must establish this safety zone by August 12, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with growing public interest for the scheduled event starting August 12, 2023.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with a sporting event starting August 1, 2023, will be a safety concern for anyone within Mile Marker 469.5 – Mile Marker 470.5 of the Ohio River and Mile Marker 0.0 – Mile Marker 0.3 of the Licking River. This rule is needed to protect

waterway users, vessels, and the marine environment in the navigable waters within the safety zone while the sporting event occurs. This includes protection of personnel involved with the sporting event and support vessels.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone from noon until 5 p.m. on August 12, 2023. The safety zone will cover all navigable waters from Miler Marker 469.5 – Mile Marker 470.5 of the Ohio River and Mile Marker 0.0 – Mile Marker 0.3 of the Licking River. The duration of the zone is intended to protect waterway users, vessels, and the marine environment in these navigable waters while the sporting event is occurring. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the duration, and time of day of the safety zone. The duration of the safety zone is five hours, and vessels will be able to contact the COTP for directions on how to transit around or seek permission to enter. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM

marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone. We do not anticipate any significant economic impact resulting from activation of the safety zone.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive

023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 5 hours that would prohibit any vessel or person from entering the safety zone without obtaining permission from the Captain of the Port (COTP) of Sector Ohio Valley or a designated representative. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water) Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 801 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and

2. Add § 100.T08-0256 to read as follows:

**§ 165.T08-0256 Safety Zone; Ohio River MM 469.5-470.5 and Licking River MM 0.0 to 0.3, Cincinnati, OH.**

(a) *Regulated area.* This section applies to the following area: Ohio River Mile Marker 469.5 - Mile Marker 470.5, extending the entire river and the Licking River from Mile Marker 0.0 - Mile Marker 0.3, extending the entire river.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Ohio Valley (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) This rule establishes a safety zone from noon through 5 p.m. on August 12, 2023. The safety zone will cover all navigable waters from Mile Marker 469.5 – Mile Marker 470.5 of the Ohio River and Mile Marker 0.0 – Mile Marker 0.3 of the Licking River. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by contacting the Patrol Commander via VHF-FM radio channel 16 or phone at 1-800-253-7465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from noon through 5 p.m. on August 12, 2023.

Dated: July 31, 2023.

H.R. Mattern,

Captain, U.S. Coast Guard,

Captain of the Port Sector Ohio Valley.

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